

NASA Interim Implementing Policies and Procedures

NASA Flexibility Act of 2004

April 28, 2004

**NASA Flexibility Act of 2004
(Public Law 108-201)**

**Consolidated Interim Implementing Policies and Procedures
(April 28, 2004)**

Amendment to the Space Act: Compensation for Certain Excepted Personnel p. 5

Title 5, United States Code, Part III, Subpart I, Chapter 98

Sec. 9804	Recruitment, redesignation, and relocation bonuses	p. 9
Sec. 9805	Retention bonuses	p.21
Sec. 9806	Term appointments	p.35
Sec. 9807	Pay authority for critical positions	p.43
Sec. 9808	Assignments of intergovernmental personnel	p.47
Sec. 9810	Distinguished scholar appointment authority	p.51
Sec. 9811	Travel/transportation expenses of certain new appointees	p.57
Sec. 9812	Annual leave enhancements	p.61
Sec. 9813	Limited appointments to SES positions	p.67
Sec. 9814	Qualifications pay	p.71

COMPENSATION for CERTAIN EXCEPTED PERSONNEL

Compensation for Certain Excepted Personnel
NASA Excepted Authority
(Sec. 2 of The NASA Flexibility Act of 2004)

PROVISION:

This provision allows NASA to raise the maximum allowable rate of pay for NASA Excepted (NEX) positions, to level III of the Executive Schedule rather than the Level IV. Raising the cap will enhance NASA's ability to hire individuals of unique, exceptional ability by compensating them at a level commensurate with their expertise.

KEY FEATURES OF PROVISION:

Section 2473 of the Space Act (42 U.S.C.) authorizes the Administrator to hire up to 425 scientific, engineering, or administrative employees (NASA excepted, or "NEX") without regard to the title 5 rules for classifying positions and assigning pay rates. Section 2 of the NASA Flexibility Act of 2004 increases the maximum rate for an NEX employee to the rate for Executive level III instead of IV and also corrects an obsolete reference to the pay scale of grade 18 of the General Schedule. This action takes effect on the first day of the first pay period beginning on or after the date of enactment.

INTERIM IMPLEMENTING POLICIES/PROCEDURES:

Currently, the only reference documents in place for the NEX authority are the Space Act, NASA Policy Directive (NPD) 3001.1 (Management of Human Resources) dated May 7, 1999, and several memoranda which further delegate authority for certain appointments and pay actions. This legislative change constitutes a modest increase in maximum payable salary. No special procedures or limitations are contemplated to implement this change. Current delegations/policies are:

- Authority to appoint and compensate employees for NEX has been delegated to the Associate Deputy Administrator (Institutions and Asset Management) and NASA Center Directors when appointed from outside civil service.
- Under this delegation, NEX may be used when there is a critical need to accomplish short-term projects, or for which the expertise required will only be necessary for a limited duration.
- Individuals may be appointed from outside the civil service for up to 3 years, and be renewed for an additional 3 years.
- The delegation also covers annual salary adjustments and merit increases, recruitment and relocation bonuses, retention allowances, and cash awards.
- The Administrator retains authority for actions not delegated.

REPORTING REQUIREMENTS:

There are no reporting requirements specified in the NASA Flexibility Act of 2004 for this provision.

RECRUITMENT, RELOCATION, and REDESIGNATION BONUSES

(These implementing policies have been approved by the Office of Personnel
Management)

Recruitment, Redesignation, and Relocation Bonuses

5 U.S.C. 9804

PURPOSE

This material provides guidance on implementing and applying the new human resources flexibilities with respect to recruitment, relocation and redesignation bonuses in the NASA Flexibility Act of 2004.

APPLICABILITY

This information is applicable to NASA Headquarters and NASA Centers, including Component Facilities. Unless otherwise indicated, the use of the word Center(s) in the text of the attachment includes NASA Headquarters, and any reference to Center Director(s) includes the Assistant Administrator for Institutional and Corporate Management. The Office of Inspector General, which has personnel authority, may choose to be covered by this guidance.

AUTHORITY

The NASA Flexibility Act of 2004 (P.L. 108-201) as codified in 5 U.S. C. 9804 (Hereafter referred to as “the Act.”)

REFERENCE

1. NPR 3530.1A, Pay Policy and Allowances
2. Memorandum: Delegation of Authority, dated February 5, 2002

RESPONSIBILITY

1. The Human Resources Officer at each NASA Center is responsible for implementing the bonus authorities outlined in the Act as prescribed in this policy.
2. Approval Levels
 - a. Senior Executive Service (SES), Scientific & Professional Positions (ST), Senior Level Positions (SL), and NASA Excepted Positions (NEX)
 - i. Per reference 2 above, the Administrator has delegated authority to approve bonuses to the Associate Deputy Administrator (Institutions and Asset Management) and/or the Associate Deputy Administrator with authority for further delegation to Executive Position Managers, without authority for further delegation.

- ii. The Administrator will approve all requests to waive bonus repayments for employees who fail to fulfill their service obligations
- b. All Other Employees
 - i. Center Directors may approve all bonuses. Approval authority may be re-delegated in accordance with NPD 3000.1, except that the approving official must be at a higher level than the individual recommending the bonus, except for the Administrator who may both recommend and approve.
 - ii. Authority to waive bonus repayments for employees who fail to fulfill their service obligations may not be re-delegated below the Center Director level.

DEFINITIONS

1. Recruitment Bonus – Paid to an individual newly appointed as an employee of the Federal Government. The term “newly appointed” will be applied as defined in 5 CFR 575.103.
2. Redesignation Bonus – Paid to an employee of another Federal agency in the Executive, Legislative or Judicial Branch of the Federal government who is appointed to a NASA position in the same geographic area.
3. Relocation Bonus – Paid to a current Federal employee who is required to relocate to a different geographic area to accept a NASA position.
4. Critical Need – Competency area in which the Agency is, or will be at risk, as identified in the NASA Workforce Plan prescribed by the Act.
5. Fresh-Out – A new appointee who has received his or her degree within a year of being hired.
6. Geographic Area – This term is synonymous with the term “commuting area” as defined in 5 CFR 575.203.
7. Supervisor – An individual having authority to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment. Supervisory duties need not require a significant amount of time, nor require a supervisory designation in the position title. (Definition stems from 5 USC 7103(a)(10).)
8. Management Official – An individual employed in a position that requires or authorizes the individual to formulate, determine, or influence agency policies. (Definition stems from 5 USC 7103(a)(11).)

EXCLUSIONS

This authority may not be used with respect to any officer who is appointed by the President, by and with the advice and consent of the Senate, or any political appointee who holds (1) a position which has been excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character (“Schedule C position”) or (2) a position in the Senior Executive Service as a noncareer appointee as such term is defined in 5 U.S.C. 3232(a).

TEMPORARY DUTY ASSIGNMENT

Relocation bonuses will not be paid for a temporary duty assignment of less than 120 days. The bonus amount will not be more than 25% of an employee’s rate of basic pay (excluding locality-based comparability payments authorized under sections 5304 and 5304a of title 5, U.S.C.) earned during the temporary duty period based on the rate in effect at the beginning of the temporary duty period. The service agreement may not be for a period shorter than six months. Therefore, the employee may fulfill the assignment period specified in the service agreement through assignments at the temporary duty location or another NASA duty location.

GENERAL REQUIREMENTS

1. All bonuses are to be used only in situations where the position would be likely, in the absence of a bonus, to be difficult to fill.
2. Bonuses are appropriate when an individual selected for a difficult to fill position indicates an unwillingness to accept because of insufficient compensation. Before offering a bonus, other incentives and alternatives should be considered, either in lieu of or in conjunction with bonuses. Other possible incentives and alternatives include superior qualifications appointments and qualifications pay, as applicable.
3. All bonuses are to be offered in accordance with merit principles, and shall be in amounts, and under terms, commensurate with the needs of the Agency.
4. Approvals must be based on written documentation that addresses the requisite criteria. The documentation also must identify whether the position addresses a critical need as identified in NASA’s Workforce Plan.
5. Payment of a bonus under these provisions is contingent upon the employee signing a service agreement.

DETERMINING BASIC ELIGIBILITY

1. Any case in which the Agency is considering paying a bonus under these provisions must be evaluated using the basic eligibility criteria outlined below in the matrix and

the explanatory paragraphs. If the situation does not meet the minimum requirements as identified below, no bonus payment may be made.

BASIC ELIGIBILITY CRITERIA

Recruitment, Relocation, Redesignation Bonuses

Criteria	Definition	Elements
Degree of Difficulty in Recruitment	Extent to which quality candidates possessing the required skills and experience are available in the labor force.	(a) Recent recruitment efforts for comparable positions in the same geographic area demonstrate that it is difficult to find well-qualified candidates.
		(b) Positions requiring the skills are often vacant, and fill times are prolonged.
		(c) Positions requiring the skills typically have a high turnover rate.
		(d) Labor market trends demonstrate that the Agency is likely to experience difficulty in finding well-qualified candidates now and/or in the future.
		(e) Candidates offered positions requiring these skills frequently decline the job offer.
		(f) Position is in a new or emerging technical area where the organization has a demand for the skills, but little recruitment history.

2. Evaluating “Degree of Difficulty in Hiring”: To meet the minimum requirements for bonus eligibility under this section, the position normally must meet any two of elements (a) through (e) OR element (f).
3. If the position does not meet at least two of the elements, identified above, but presents issues of equivalent difficulty in the recruitment process, they may be used in lieu of elements (a) through (e) in justifying payment of a bonus.
4. Each case file must include documentation explaining and supporting the basis of payment eligibility. Where a position is described as having a prolonged fill time or a high turnover rate, the justification must include information supporting that determination in the context of the specific type of work involved.

DETERMINING THE BONUS LEVEL

1. Whenever there has been a positive determination of bonus eligibility, a further determination must be made as to the appropriate bonus level.

2. Bonus Maximums

- a. Individuals in positions requiring competencies identified in the NASA Workforce Plan as meeting a **critical need** are eligible for a bonus up to a maximum of 50% of the annual rate of basic pay (including comparability payments authorized under sections 5304 and 5304a of title 5, U.S.C.) at the beginning of the service period multiplied by the service period. The service period shall, for this purpose, be identified in years and fractions of years. (Note: Total bonus payment may not exceed 100% of the annual rate of basic pay as of the beginning of the service period. Therefore, any individual receiving the maximum amount of the bonus will incur a service period of two years.)
- b. Individuals in positions **not** requiring competencies defined as critical needs are eligible for a bonus up to a maximum of 25% of the employee's annual rate of basic pay (excluding comparability payments authorized under sections 5304 and 5304a of title 5, U.S.C.) as of the beginning of the service period.

3. General Principles:

- a. There is no entitlement, either implied or explicit, for an employee to receive the maximum bonus allowable under the law.
- b. Even where the evaluation of the criteria may support payment of a high bonus, the organization will pay a smaller bonus if such an amount is sufficient to secure a candidate's acceptance.

4. Bonus Level Assessment: The following matrix is to be used in determining the appropriate maximum level of bonus payment.

BONUS LEVEL EVALUATION CRITERIA
Recruitment, Relocation, and Redesignation Bonuses

Criteria	Definition	Elements
1. Impact of Market Forces	Extent to which a specific candidate is likely to accept a job offer.	(a) Applicant provides evidence of a higher competing offer of employment. (Note: Offer may be from a Federal OR non-Federal employer.)
		(b) Candidate's current salary is higher than the salary of the position being offered. (Note: Position being offered may be Federal or non-Federal.)
		(c) Salaries in the candidate's field are higher than for those of comparable positions at this location, as demonstrated by salary surveys or other objective evidence.
2. Individual Attributes	Extent to which the individual possesses competencies that will enhance that Agency's ability to accomplish its mission.	(a) Individual's work experience and/or academic preparation have an unusually close and direct relevance to the position being filled.
		(b) Individual has contributed to the expansion of the body of knowledge in the professional field as evidenced by research publications and/or leadership on professional panels, committees, and/or professional and honorary societies.
		(c) Individual's professional contributions have been formally recognized in the form of awards, citations, and/or commendations.
		(d) Individual brings new skills or perspectives not previously available, as demonstrated by unique or unconventional professional achievements.
		(e) FRESH-OUTS ONLY: Candidate possesses a high level and quality of educational attainment compared to the minimum educational requirements of the position. "High level and quality" is defined as an individual who has at least a 3.5 GPA in the academic discipline related to the position being filled.

- a. **Using the Matrix:** Criteria in the matrix provide key representative examples of elements that may be used to establish the level of the bonus payment. They are not, however, all-inclusive. Other issues of commensurate significance may be used, when documented, to establish the level of the bonus.
- b. **Candidates Meeting Only Basic Eligibility:** In some cases, candidates may meet basic bonus eligibility, but do not meet any of the criteria in the matrix above, or other comparable elements. Such individuals will be paid bonuses that do not exceed one-third of the maximum percentage allowable under the law. That is, bonuses paid to candidates for critical need positions will not exceed

approximately 17% (out of a maximum 50%) of basic salary; bonuses paid to candidates for positions not meeting a critical need will not exceed approximately 8% (out of a maximum 25%) of basic salary.

- c. **Criterion 1, Impact of Market Forces:** Candidates who meet one or more of these or comparable elements may be offered a bonus sufficiently high enough to be competitive with the individual's other employment alternative(s), and to create an incentive to accept the NASA position.

- d. **Criterion 2, Individual Attributes**

- i. **Candidates who meet Criterion 1**, and who also possess skills and knowledge with the potential to substantially enhance NASA's capabilities and reputation by meeting one or more of the elements under Criterion 2 or equivalent elements, may be paid a bonus up to the maximum amount allowable.
- ii. **Candidates who do not meet Criterion 1**, but who demonstrate a high level of professional achievement, comparable to the elements outlined under Criterion 2 of the matrix, may be awarded bonuses higher than the minimum one-third of the maximum under paragraph 4b of this section. The documentation must demonstrate a level of accomplishment sufficient to justify the percentage being offered.

- 5. All bonus level determinations beyond the minimum must be supported by documentation of the circumstances warranting the higher-level payment.

PAYMENTS

- 1. Bonuses paid under these provisions are not to be considered part of an employee's rate of basic pay for any purpose.
- 2. Bonuses paid under these provisions are subject to the aggregate compensation limitation established in 5 U.S.C. 5307 and regulated in 5 CFR part 530, subpart B. They constitute "other similar payments" under paragraph (14) of the definition of "aggregate compensation" in 5 CFR 530.202.
- 3. The final decision on the payment method rests with management, although employee preferences should be given strong consideration to the extent practicable.
- 4. Bonuses may be paid as an initial lump-sum payment, in equal installments at the end of specified periods throughout the service period (e.g., biweekly, monthly, quarterly, etc.), in variable payments at the end of specified periods, as a final lump sum payment, or in a combination of payment methods.

SERVICE AGREEMENTS

1. Approving officials will assure that the service agreement provides for the maximum return on the Agency investment appropriate in the specific circumstances.
2. Service agreements will be for a period of not less than 6 months and not more than 4 years. The service period must begin on the first day of a pay period and end on the last day of a pay period.
3. Before paying a bonus, the agency must require the employee to sign a written service agreement to complete a specified period of employment. The service agreement must include:
 - a. The required period of service, which will be expressed in years and/or whole months, with partial months being rounded to the nearest month.
 - b. The method of payment, including the payment schedule.
 - c. The amount of the bonus and the basis for calculation.
 - d. Conditions under which the agreement may be terminated before the expiration of the service period and the effect of such early termination.
 - e. Conditions under which the employee would be required to repay a bonus, and how a repayment will be computed.
4. In addition to the service requirement in paragraph outlined above, the service agreement may specify other terms and conditions of employment applicable to the employee. For example, the service agreement may specify the employee's work schedule, type of position, and performance level. In addition, the service agreement may address the extent to which periods of time on a detail, in a nonpay status, or in a paid leave status are creditable towards the completion of the service period.

LIMITATION ON BONUS USE FOR SUPERVISORS AND MANAGERS

1. Not more than 25% of bonus money paid in any year under these provisions may be given to employees occupying positions designated as supervisors or management officials.
2. To assure an appropriate ratio at the end of each fiscal year, Centers must assure that the total fiscal year projected bonus payout amount always falls within the required ratio limits.
3. At the time the offer is made, information about each bonus paid under these provisions will be provided to HQ, Office of Human Resources for tracking and

monitoring, to assure that the Agency remains in compliance with the required ratio. The offering Center will, at a minimum, provide the following information:

- a. Type of bonus
 - b. Position information, e.g., supervisor, management official, non-supervisor
 - c. Total amount of bonus
 - d. Payment schedule
4. In making the ratio determination, only money actually paid out during the fiscal year is used in the annual calculation. That is, for any employee who receives payment on an installment basis, only that portion of the installment paid in a given fiscal year may be credited toward that year's ratio.

BONUS REPAYMENT

1. Employees who fail to complete the established period of service normally will be required to repay bonus monies under the conditions specified in the service agreement. Employees may also be required to repay a bonus if they violate any other condition specified in the service agreement that would trigger termination of the agreement.
2. Employees who fail to complete the period of employment established under a service agreement shall be required to repay the bonus on a pro rata basis, as identified in 5 CFR 575.107. The amount to be repaid shall be determined by providing credit for each full month of employment completed by the employee under the service agreement.
3. Consistent with the criteria in 5 CFR Part 575, no employee will be required to repay a bonus if he or she is involuntarily separated, as that term is defined in 5 CFR 575.103. No employee receiving a relocation bonus will be required to repay that bonus if the Agency determines that it is necessary to relocate the employee outside of the commuting area.
4. Re-payment may be waived only when a determination is made that recovery would be against equity and good conscience or against the public interest.

ACTION PROCESSING

[NOTE: Guidance will be based on the forthcoming guidance from OPM regarding Nature of Action Codes and Authority Codes.]

REPORTING REQUIREMENTS

1. All bonuses given under these provisions are to be reported in accordance with the format prescribed by Headquarters, Office of Human Resources. Information is to be provided to Headquarters as requested, but not less than annually at such dates specified to ensure compliance with the annual Congressional reporting requirements.
2. Each Center shall, at a minimum, maintain the following data by bonus type and by whether or not the bonus is paid to address a critical need: total amount of bonuses paid, the total number of bonuses paid, the percentage of the amount of bonuses paid to supervisors and management officials, and the average percentage used to calculate the total average bonus amount.

Centers may maintain additional information as they deem useful and appropriate.

RETENTION BONUSES

(These implementing policies have been approved by the Office of Personnel Management)

Retention Bonuses

5 U.S.C. 9805

PURPOSE

This material provides guidance on implementing and applying the provisions pertaining to retention bonuses in the NASA Flexibility Act of 2004.

APPLICABILITY

This information is applicable to NASA Headquarters and NASA Centers, including Component Facilities. Unless otherwise indicated, the use of the word Center(s) in the text of the attachment includes NASA Headquarters, and any reference to Center Director(s) includes the Assistant Administrator for Institutional and Corporate Management. The Office of Inspector General, which has personnel authority, may choose to be covered by this guidance.

AUTHORITY

The NASA Flexibility Act of 2004 (P.L. 108-201) as codified in 5 U.S.C. 9805. (Hereafter referred to as the Act.)

REFERENCES

1. NPR 3530.1A, Pay Policy and Allowances
2. Memorandum: Delegation of Authority, dated February 5, 2002

RESPONSIBILITY

1. The Human Resources Officer at each NASA Center is responsible for implementing the bonus authorities outlined in the Act as prescribed in this policy.
2. Approval Levels
 - a. Senior Executive Service (SES), Scientific & Professional Positions (ST), Senior Level Positions (SL), and NASA Excepted Positions (NEX)
 - i. Per reference 2 above, the Administrator has delegated authority to approve bonuses to the Associate Deputy Administrator (Institutions and Asset Management) and/or the Associate Deputy Administrator with authority for further delegation to Executive Position Managers, without authority for further delegation

- ii. The Administrator will approve all requests waive bonus repayments for employees who fail to fulfill their service obligations
- b. All Other Employees
 - i. Center Directors may approve all bonuses. Approval authority may be re-delegated in accordance with NPD 3000.1, except that the approving official must be at a higher level than the individual recommending the bonus, except for the Administrator who may both recommend and approve.
 - ii. Authority to waive bonus repayments for employees who fail to fulfill their service obligations may not be re-delegated below the Center Director level.

DEFINITIONS

1. Retention Bonus – Paid to a current NASA employee as an incentive to remain in his or her position. This includes individuals leaving to accept positions outside the Federal government OR in another Federal agency.
2. Critical Need – Competency area in which the Agency is or will be at risk, as identified in the NASA Workforce Plan prescribed by the Act.
3. Supervisor – An individual having authority to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment. Supervisory duties need not require a significant amount of time, nor require a supervisory designation in the position title. (Definition stems from 5 USC 7103(a)(10).)
4. Management Official – An individual employed in a position that requires or authorizes the individual to formulate, determine, or influence agency policies. (Definition stems from 5 USC 7103(a)(11).)

EXCLUSIONS

1. An employee may not receive a retention bonus for any period of service for which he or she received/is receiving a recruitment, redesignation, or relocation bonus under either 5 U.S.C. 9804 or under 5 U.S.C. 5753.
2. This authority may not be used with respect to any officer who is appointed by the President, by and with the advice and consent of the Senate, or any political appointee who holds (1) a position that has been excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character (“Schedule C position”); or (2) a position in the Senior Executive Service as a non-career appointee as such term is defined in 5 U.S.C. 3232(a).

GENERAL REQUIREMENTS

1. Retention bonuses are to be used in situations where the employee is likely to leave the Agency, and it is essential to retain an employee's services because of the employee's unusually high or unique qualifications; or because of a special agency need that makes it essential to retain the employee.
2. Retention bonuses are to be offered in accordance with merit principles, and shall be in amounts, and under terms, commensurate with the needs of the Agency.
3. Approval must be based on written documentation that addresses the requisite criteria. The documentation must specifically identify whether or not the individual occupies a position supporting a competency designated as a critical need, as identified in the Act.
4. Unless the employee is paid the full percentage of the bonus in biweekly installments, payment is contingent upon the employee signing a service agreement with the Agency.
5. Individuals who are given a retention bonus under terms not requiring a service agreement are subject to annual verification. The approving official must certify that the employee/position continue to meet the criteria for payment of the bonus. Such retention bonuses may be reduced or terminated at any time.

DETERMINING BASIC ELIGIBILITY

1. Any case in which the Agency is considering paying a bonus under these provisions must be evaluated using the basic eligibility criteria in the matrix and the explanatory paragraphs. If the situation does not meet the minimum requirements as identified below, no bonus payment may be made.

BASIC ELIGIBILITY CRITERIA
Retention Bonuses

Criteria	Definition	Elements
1. Likelihood of Employee Loss	Extent to which the employee is likely to leave the Agency.	(a) The employee has expressed a specific intention of leaving the Agency.
2. Program Impact	Extent to which the employee's departure affects Agency projects or programs.	(a) The employee has extensive subject matter expertise and experience in a project or program area.
		(b) The employee serves as a key mentor and knowledge base for less experienced employees within the organization.
3. Degree of Difficulty in Replacement	Extent to which quality candidates possessing the required skills and experience are available in the labor force.	(a) Recent recruitment efforts for comparable positions in the same geographic area demonstrate that it is difficult to find well-qualified candidates.
		(b) Positions requiring the skills are often vacant, and fill times are prolonged.
		(c) Positions requiring the skills typically have a high turnover rate.
		(d) Labor market trends demonstrate that the Agency is likely to experience difficulty in finding well-qualified candidates now and/or in the future.
		(e) Candidates offered positions requiring these skills frequently decline the job offer.
		(f) Position is in a relatively new or emerging technical area where there is limited recruitment history.

2. All cases must meet Criterion 1 AND meet either Criterion 2 OR Criterion 3.

- a. **Criterion 1, Likelihood of Employee Loss:** In order for the Agency to offer a retention bonus, there must be a likelihood that the employee would leave the Agency in the absence of such a payment. Eligibility is, therefore, contingent on the employee meeting this criterion.

- b. **Criterion 2, Program Impact:** Situations meeting this criterion must meet at least one of the two elements.
- c. **Criterion 3, Degree of Difficulty in Replacement:**
 - i. The contention that the employee possesses unique or high level skills must be supported by evidence that, should the employee leave, the Agency would find it difficult to replace him or her with someone of equal caliber.
 - ii. The position normally will meet either at least two of elements (a) through (e); OR element (f).
 - iii. If the position does not meet at least two of the elements identified in Criterion 3, but presents issues of equivalent difficulty in the replacement process, they may be used in lieu of elements (a) through (e) in justifying payment of a bonus.
- d. Each case file must include documentation explaining and supporting the basis of payment eligibility. Where a position is described as having a prolonged fill time or a high turnover rate, the justification must include information supporting that determination in the context of the specific type of work involved.

DETERMINING THE BONUS LEVEL

1. Whenever there has been a positive determination of bonus eligibility, a further determination must be made as to the appropriate level of bonus payment.
2. Bonus Maximums
 - a. Individuals in positions requiring competencies identified in the workforce plan as meeting a **critical need** are eligible for a maximum bonus of not more than 50% of annual rate of basic pay (including locality-based comparability payments authorized under sections 5304 and 5304a of title 5, U.S.C.). For employees paid retention bonuses in other than biweekly installments, this means that total retention bonus payments paid under a single one-year (or longer) service agreement may not exceed 50% of the employees annual rate of basic pay (including locality-based comparability payments) in effect at the beginning of the service period. However, if the service agreement is for a period of less than one year, the total retention bonus payments paid would be a prorated share of the maximum amount allowed under a single one-year service agreement. For employees paid retention bonuses in biweekly installments, this means that each biweekly retention bonus payment may not exceed 50% of the employee's biweekly rate of basic pay (including locality-based comparability payments) that is in effect when the biweekly retention bonus payment is made.

- b. Individuals in positions that do **not** require competencies defined as critical needs are eligible for a maximum bonus of not more than 25% of the employee's annual rate of basic pay (excluding locality-based comparability payments authorized under sections 5304 and 5304a of title 5, U.S.C.). For employees paid retention bonuses in other than biweekly installments, this means that total retention bonus payments paid under a single one-year (or longer) service agreement may not exceed 25% of the employee's annual rate of basic pay (excluding locality-based comparability payments) in effect at the beginning of the service period. However, if the service agreement is for a period of less than one year, the total retention bonus payments paid would be a prorated share of the maximum amount allowed under a single one-year service agreement. For employees paid retention bonuses in biweekly installments, this means that each biweekly retention bonus payment may not exceed 25% of the employee's biweekly rate of basic pay (excluding locality-based comparability payments) that is in effect when the biweekly retention bonus payment is made.

3. General Principles:

- a. There is no entitlement, either implied or explicit, for an employee to receive the maximum bonus allowable under the law.
- b. Even where evaluation of the criteria may support payment of a high bonus, the organization will pay a smaller bonus if such an amount is sufficient to induce the individual to stay, or if budget or other appropriate concerns so dictate.

4. Bonus Level Assessment: The following matrix is to be used in determining the appropriate maximum level of bonus payment.

BONUS LEVEL EVALUATION CRITERIA
Retention Bonuses

Criteria	Definition	Elements
1. Impact of Market Forces	Extent to which an employee is likely to remain in his or her position.	(a) The employee provides evidence of a higher competing offer of Federal or non-Federal employment.
		(b) Salaries in the employee's field are higher than those of comparable Federal or non-Federal positions at the location where the employee works, as demonstrated by salary surveys or other objective evidence.
2. Individual Attributes	Extent to which the employee possesses skills and competencies of an exceptionally high or unique nature.	(a) Employee possesses skills or perspectives that are unique in the workforce.
		(b) Employee has contributed to the expansion of the body of knowledge in the professional field as seen by research publications and/or leadership on professional panels, committees, and/or professional and honorary societies.
		(c) Employee's professional contributions have been formally recognized by performance awards; and/or awards, citations, or commendations from professional groups.

- a. **Using the Matrix:** Criteria in the matrix provide key representative examples of elements that may be used to establish the level of the bonus payment. They are not, however, all-inclusive. Other issues of commensurate significance may be used, when documented, to establish the level of the bonus.
- b. **Candidates Meeting Only Basic Eligibility:** In some cases, candidates may meet basic retention bonus eligibility, but do not meet any of the criteria in the matrix, or other comparable elements. Such individuals will be paid bonuses that do not exceed one-third of the maximum percentage allowable under the law. That is, bonuses paid to candidates in critical need positions will not exceed approximately 17% (out of a maximum 50%) of basic salary; bonuses paid to candidates in positions not meeting a critical need will not exceed approximately 8% (out of a maximum 25%) of basic salary.
- c. **Criterion 1, Impact of Market Forces:** Candidates who meet one or both of these or comparable elements may be offered a bonus sufficiently high enough to be competitive with the individual's other alternative(s), and to create an incentive to remain in the NASA position.

d. Criterion 2, Individual Attributes

- i. **Candidates who meet Criterion 1**, but who also possess skills and knowledge that substantially enhances NASA's capabilities and reputation by meeting one or more of the elements in Criterion 2 (or equivalent elements), may be paid a bonus up to the maximum amount allowable.
 - ii. **Candidates who do not meet Criterion 1**, but who demonstrate a high level of professional achievement, comparable to the elements outlined in Criterion 2 of the matrix, may be awarded bonuses higher than the minimum one-third of the maximum under paragraph 4b of this section. The documentation must demonstrate a level of accomplishment sufficient to justify the percentage being offered.
5. All bonus level determinations beyond the minimum must be supported by documentation of the circumstances warranting the higher-level payment.

PAYMENTS

1. Any retention bonus paid under these provisions is not to be considered part of the employee's rate of basic pay for any purpose.
2. Any retention bonus paid under these provisions is subject to the aggregate compensation limitation established in 5 U.S.C. 5307 and regulated in 5 CFR 530, subpart B. It constitutes an "other similar payment" under paragraph (14) of the definition of "aggregate compensation" in 5 CFR 530.202.
 - a. In cases where a retention bonus that is paid in a lump-sum or in other than biweekly installments (for which a service agreement is required), if the retention bonus would cause an employee's estimated aggregate compensation to exceed the aggregate limitation on pay at the end of the calendar year, the amount of the bonus in excess of the aggregate limit must be deferred and paid out at the beginning of the next calendar year in accordance with 5 U.S.C. 5307 and 5 CFR part 530, subpart B. If an employee does not fulfill the service agreement, the employee is entitled only to the amount of any deferred retention bonus payment attributable to service fulfilled. Deferred retention bonus payments attributable to unfulfilled service time must be forfeited.
 - b. In cases where a retention bonus is paid on a per pay period basis (for which a service agreement is not required), retention bonus payments are administered under the aggregate pay limitation consistent with the retention allowance regulations at 5 CFR 575.306(b) and 575.307(a). A retention bonus may not be authorized if or to the extent the bonus when added to the employee's estimated aggregate compensation would cause the aggregate compensation actually received by the employee during the calendar year to exceed the

aggregate limitation on pay. In addition, the Agency will reduce or terminate the authorized amount of a retention bonus to the extent necessary to ensure that the employee's estimated aggregate compensation does not exceed the aggregate pay limitation at the end of the calendar year.

3. The final decision on the payment method rests with management, although employee preferences should be given strong consideration to the extent practicable.
4. Bonuses may be paid as an initial lump-sum payment, in equal installments at the end of specified periods throughout the service period (e.g., biweekly, monthly, quarterly, etc.), in variable payments at the end of specified periods, as a final lump sum payment, or in a combination of payment methods.
5. Determining the Rate to be Used in Paying the Bonus:
 - a. When the employee elects to take the bonus as a payment of the full percentage in biweekly installments, i.e., incurs no service agreement, the bonus installment will be calculated as a percentage of the annual rate of pay in effect at the time payment is made.
 - b. In any situation other than that described in paragraph 5a above, i.e., whenever the employee incurs a service agreement, the total bonus amount paid shall be calculated based on a percentage of the annual rate of pay in effect at the time the service agreement is signed.

SERVICE AGREEMENTS

1. Unless the employee is paid the full percentage of the bonus in biweekly installments, payment is contingent upon the employee signing a service agreement with the Agency. When the full bonus is paid in biweekly installments, no service agreement is required.
2. Approving officials will assure that the service agreement provides for the maximum return on the Agency investment appropriate in the specific circumstances.
3. Service agreements will be for a period of not less than six months and not more than four years. The service period must begin on the first day of a pay period and end on the last day of a pay period.
4. All service agreements will include the following information:
 - a. Required period of service, which will be expressed in years and/or whole months, with partial months being rounded to the nearest month.
 - b. Method of payment, including payment schedule.
 - c. Amount of bonus and basis for calculation.

- d. Salary rate to be used in making installment payments.
- e. Conditions under which agreement may be terminated before the expiration of the service period, and the effect of such early termination.
- f. Conditions under which the employee would be required to repay a bonus, and how the repayment amount is computed

5. In addition to the service requirement in paragraph outlined above, the service agreement may specify other terms and conditions of employment applicable to the employee. For example, the service agreement may specify the employee's work schedule, type of position, and performance level. In addition, the service agreement may address the extent to which periods of time on a detail, in a nonpay status, or in a paid leave status are creditable towards the completion of the service period.

REVIEW AND RECERTIFICATION

When no service agreement is required, the approving official must recertify annually that payment of the bonus is still appropriate. Recertification must be based on a review demonstrating that the conditions warranting payment of the bonus continue to exist. If applicable, this review must include verification the position contains competencies meeting a critical Agency need. Based on the results of the review the bonus may be continued, terminated, or modified to reflect any change in circumstances. Documentation is required to demonstrate that the review has been done, and to support action(s) taken.

LIMITATION ON BONUS USE FOR SUPERVISORS AND MANAGERS

1. Not more than 25% of the retention bonus money paid in any year under these provisions may be given to employees occupying positions designated as supervisors or management officials.
2. To assure an appropriate ratio at the end of each fiscal year, Centers must assure that the total annual projected bonus payout amount always falls within the required ratio limits.
3. At the time the offer is made, information about each bonus paid under these provisions will be sent to HQ, Office of Human Resources for tracking and monitoring, to assure that the Agency remains in compliance with the required ratio. The offering Center will, at a minimum, provide the following information:
 - a. Type of bonus
 - b. Position information, e.g., supervisor, management official, non-supervisor

c. Total amount of bonus

d. Payment schedule

4. In making the ratio determination, only money actually paid out during the fiscal year is used in the calculation. That is, for any employee who receives payment on an installment basis, only that portion of the installment paid in a given fiscal year may be credited toward that year's ratio.

BONUS REPAYMENT

2. Employees who fail to complete the established period of service normally will be required to repay bonus monies under the conditions specified in the service agreement. Employees may also be required to repay a bonus if they violate any other condition specified in the service agreement that would trigger termination of the agreement.
3. Employees who fail to complete the period of employment established under a service agreement shall be required to repay the bonus on a pro rata basis, as identified in 5 CFR 575.107. The amount to be repaid shall be determined by providing credit for each full month of employment completed by the employee under the service agreement.
4. Consistent with the criteria in 5 CFR Part 575, no employee will be required to repay a bonus if he or she is involuntarily separated as that term is defined in 5 CFR 575.103.
5. Re-payment may be waived only when a determination is made that recovery would be against equity and good conscience or against the public interest.

ACTION PROCESSING

[NOTE: Guidance will be based on the forthcoming guidance from OPM regarding Nature of Action Codes and Authority Codes.]

REPORTING REQUIREMENTS

1. All bonuses given under these provisions are to be reported in accordance with the format prescribed by Headquarters, Office of Human Resources. Information is to be provided to Headquarters as requested, but not less than annually at such dates specified to ensure compliance with the annual Congressional reporting requirements.
2. Each Center shall, at a minimum, maintain the following data by whether or not the bonus is paid to address a critical need: total amount of bonuses paid, the total number of bonuses paid, the percentage of the amount of bonuses paid to supervisors and

management officials, and the average percentage used to calculate the total average bonus amount.

Centers may maintain additional information as they deem useful and appropriate.

TERM APPOINTMENTS

Term Appointments

5 U.S.C. 9806

PURPOSE

This material provides guidance on implementing and applying the new human resources flexibilities with respect to term appointments and conversions in the NASA Flexibility Act of 2004.

APPLICABILITY

This guidance is applicable to NASA Headquarters and NASA Centers, including Component Facilities. Unless otherwise indicated, the use of the word Center(s) in the text of the attachment includes NASA Headquarters, and any reference to Center Director(s) includes the Assistant Administrator for Institutional and Corporate Management. The Office of the Inspector General, which has personnel authority, may choose to be covered by this guidance.

AUTHORITY

Section 9806 of the NASA Flexibility Act of 2004 (PL 108-201) (Hereafter referred to as the Act.)

REFERENCES

1. NPR 3300.1, Appointment of Personnel To/From NASA
2. NPR 3335.1F, Internal Placement of NASA Employees

RESPONSIBILITY

The Human Resources Officer at each NASA Center is responsible for implementing the term authorities outlined in the Act as prescribed in this memorandum.

DEFINITIONS

1. Term Appointment – A non-permanent appointment made for up to a maximum of six years. Reasons for making a term appointment include, but are not limited to: project work, extraordinary workload, scheduled abolishment, reorganization, contracting out of the function, uncertainty of future funding, or the need to maintain permanent positions for placement of employees who would otherwise be displaced from other parts of the organization.

2. Same Geographic Location – For purposes of this provision, this term is defined to mean the same Center (as that in which the employee is currently working), or any satellite unit serviced by the human resources offices for that Center.
3. Current Continuous Service – A period of time, beginning at the present and extending back through all periods of term employment in the competitive service not separated by a break of three days or more. *The service need not have been performed solely at NASA, and may have occurred in one or more other Federal agencies.*
4. Critical Need – Competency area in which the Agency is, or will, at risk, as identified in the NASA Workforce Plan prescribed by the Act.

EXCLUSION

This authority may not be used in connection with a political appointee who holds (1) a position that has been excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character (“Schedule C position”); or (2) a position in the Senior Executive Service as a non-career appointee as such term is defined in § 3232(a) of title 5, United States Code.

MAKING OR EXTENDING TERM APPOINTMENTS FOR UP TO SIX YEARS

1. Appointments Made Prior to the Implementation of the Act
 - a. Any term employee whose current appointment offered the potential to serve the full four year maximum period may be non-competitively extended up to six years, PROVIDED THAT:
 - i. There are no qualified and available Interagency Career Assistance Transition Program (ICTAP) eligibles; AND
 - ii. The extension covers the same position in the same organization as that in which the employee is currently working.
 - b. Term employees whose current appointment does not provide for a full four-year period of service must be extended beyond the period originally stipulated through competitive procedures.
2. Extension of Appointments Made After the Implementation of the Act
 - a. Announcements for term positions will, as a matter of standard practice, state that the position has the potential to be extended for up to a maximum of six years, even if the initial appointment period is for a shorter period.

- b. Based on the preceding, all term appointments may then be extended for up to six years on a non-competitive basis.

ADVERTISING VACANT POSITIONS

1. Term Positions
 - a. In the absence of compelling reasons not to do so, all vacancy announcements to fill term positions will state that individuals selected under this announcement will be eligible for conversion to permanent appointment under the provisions of the Act.
 - b. If management determines that it is not appropriate for the vacancy announcement to offer a conversion opportunity, the responsible human resources specialist will document the case file as to the reasons for that decision
2. Permanent Positions: All announcements for permanent positions will include a statement that term employees who meet the requisite eligibility criteria may compete under competitive placement procedures and, if selected, be converted to permanent appointment.

BASIC REQUIREMENTS FOR CONVERSION OF TERM EMPLOYEES

NASA term employees who meet the following criteria are eligible for non-competitive appointment to a permanent position at NASA:

1. The employee was selected for the term position under title 5 competitive procedures, and the announcement stated that the individual(s) selected may be eligible for conversion to permanent appointment.
2. The individual has at least two years of continuous service under a term appointment in the competitive service.
3. The individual's performance is fully successful or better.
 - a. Formal performance documentation is required to support this determination.
 - b. Documentation is required for the entire two-year period upon which eligibility is based.

REQUIREMENTS FOR NON-COMPETITIVE CONVERSION

1. Any employee who meets **all** of the preceding criteria, **and** who meets **all** of the following requirements is eligible for non-competitive conversion to a permanent appointment.

- a. It must be in the same geographic location;
 - b. In the same occupational series; **and**
 - c. Have no greater promotion potential than the term position currently held.
2. No term employee has an entitlement to a non-competitive conversion. Even if an eligible employee is available and interested, management still may elect to require competition, selecting the candidate best qualified for the position.

REQUIREMENTS FOR COMPETITIVE CONVERSION

1. Term employees who meet the basic eligibility requirements, but who do not meet ALL of the requirements for non-competitive conversion, may be considered under competitive placement procedures. (Note: When management does not wish to make a non-competitive selection, employees eligible for non-competitive action may apply and be considered under competitive procedures.)
2. Referring Term Employees for Selection Consideration Under Competitive Placement Procedures (CPP)
 - a. Term employees may apply to any CPP announcement for which they believe themselves to be qualified, including those open only to NASA employees.
 - b. Qualified term employees will be referred and considered equally with other candidates.
 - c. Term employees who apply based on their eligibility for conversion will be presumed to be correctly identified. No further validation of eligibility, e.g. level of performance, will be required prior to referral.
 - d. Term employees who are eligible for non-competitive conversion will be referred on the list of candidates eligible for non-competitive selection.

ADVISING EMPLOYEES

All new term employees should be informed regarding NASA's term authorities when they are appointed.

ACTION PROCESSING

1. Upon tentative selection of a term employee for a permanent position, the human resources specialist will validate that individual's eligibility for conversion.
2. [NOTE: Guidance on personnel action process will be based on forthcoming guidance from OPM regarding Nature of Action Codes and Authority Codes.]

REPORTING REQUIREMENTS

1. All conversions of term appointments under these provisions are to be in accordance with the format prescribed by Headquarters, Office of Human Resources. Information is to be provided to Headquarters as requested, but not less than annually at such dates specified to ensure compliance with annual Congressional reporting requirements.
2. Each Center shall, at a minimum, maintain data on the total number of term appointments converted to permanent, and of those, the number that were made to address a critical need.
3. Centers may maintain additional information as they deem useful and appropriate.

PAY AUTHORITY for CRITICAL POSITIONS

Pay Authority For Critical Positions 5 U.S.C. 9807

PURPOSE

This provision modifies the existing critical pay authority (title 5, United States Code, Section 5377 and Office of Management and Budget (OMB) Circular 91-09) by eliminating the OMB and Office of Personnel Management approval process and authorizing a salary up to that of the Vice President. Current rules require the approval of the President to pay a salary exceeding Executive Level I.

REFERENCES

1. 5 USC 5377
2. OMB Circular 91-09
3. NPR 3530.1A, Policy and Allowances

KEY FEATURES OF LAW

1. The NASA Flexibility Act of 2004 (P.L. 108-201) as codified in 5 U.S.C. 9807 authorizes the Administrator to set pay for a NASA employee occupying a position which requires expertise of an extremely high level in a technical or professional field, critical to NASA's successful accomplishment of its mission.
2. The authority can be used to recruit new employees and for current NASA employees, but not for employees of other Federal agencies who transfer to NASA.
3. The salary could be set at a rate up to that authorized for the Vice President. If set below this rate, the employee could not receive an allowance, bonus, or other payment during any calendar year that would cause his/her total salary to exceed the Vice President's annual salary.
4. In order to ensure that this authority is used for truly exceptional cases, it is limited to 10 employees at any one time.

EXCLUSION

This authority may not be used in connection with a political appointee who holds (1) a position that has been excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character ("Schedule C

position”); or (2) a position in the Senior Executive Service as a non-career appointee as such term is defined in § 3232(a) of title 5, United States Code.

INTERIM IMPLEMENTING POLICIES and PROCEDURES

Current NASA policy and procedures regarding approving use of this pay authority for critical positions are unchanged except for the approval level. NPR 3530.1A will be revised to include critical position pay authority. The NPR will reflect the Administrator’s final approval authority under the NASA Flexibility Act of 2004 and indicate that the authority is limited to critical needs positions. Since it is possible that NASA would use the existing authority for critical position pay (for example, to hire a current Federal employee or if the Agency has hired 10 individuals under the NASA authority), the NPR also will cover that authority.

REPORTING REQUIREMENTS:

The employee’s Human Resources organization shall keep a record of each submission. Records requirements will be specified in the revised NPR 3530.1A. Section 9807 of title 5, U.S.C. requires NASA to track by fiscal year the number of positions for pay is set under this provision and the number of positions for which such pay is terminated.

ASSIGNMENTS OF INTERGOVERNMENTAL PERSONNEL

Assignments of Intergovernmental Personnel 5 U.S.C. 9808

PURPOSE

This material provides guidance on implementing the new human resources flexibilities with respect to Intergovernmental Personnel Act (IPA) assignments

APPLICABILITY

This information is applicable to NASA Headquarters and NASA Centers, including Component Facilities. Unless otherwise indicated, the use of the word Center(s) in the text of the attachment includes NASA Headquarters, and any reference to Center Director(s) includes the Assistant Administrator for Institutional and Corporate Management. The Office of the Inspector General, which has personnel authority, may choose to be covered by this guidance.

AUTHORITY:

The NASA Flexibility Act of 2004 (PL 108-201) as codified in 5 U.S.C. 9808. (Hereafter referred to as the Act.)

REFERENCE

NPR 3300.1, Appointment of Personnel To/From NASA

RESPONSIBILITY

The Human Resources Director at each NASA Center is responsible for implementing the IPA provision outlined in the Act as prescribed in this memorandum.

APPLICABILITY

This change applies to individuals being assigned to NASA from other organizations, and to NASA employees being assigned to participating organizations.

EXTENSION OF ASSIGNMENTS

1. After the initial two year assignment, an individual on an IPA assignment may be extended for up to an additional four years, not to exceed a total of six years for the entire assignment.
2. The extension requires the concurrence of the organizations to and from which the individual is assigned, and requires the consent of the employee concerned.

ACTION PROCESSING

[NOTE: Guidance on personnel action processing will be based on forthcoming guidance from OPM regarding Nature of Action Codes and Authority Codes.]

REPORTING REQUIREMENTS

1. Centers will continue to provide data for annual reporting to OPM.
2. In addition to data currently provided, Centers must now identify assignments extended beyond four years, and the exact length of that extension.

DISTINGUISHED SCHOLAR APPOINTMENT AUTHORITY

Distinguished Scholar Appointment Authority

5 U.S.C. 9810

PURPOSE

This material provides guidance on implementing and applying the new human resources flexibilities with respect to the Distinguished Scholar Appointing Authority. The principal objective of this authority is to provide due weight in the selection process to the academic performance of recent graduates.

APPLICABILITY

This information is applicable to NASA Headquarters and NASA Centers, including Component Facilities. Unless otherwise indicated, the use of the word Center(s) in the text of the attachment includes NASA Headquarters, and any reference to Center Director(s) includes the Assistant Administrator for Institutional and Corporate Management. The Office of the Inspector General, which has personnel authority, may choose to be covered by this guidance.

AUTHORITY

The NASA Flexibility Act of 2004 (P.L. 108-201) as codified in 5 U.S.C. (Hereafter referred to as the Act.)

REFERENCE

NPR 3300.1, Appointment of Personnel To/From NASA

RESPONSIBILITY

The Human Resources Director at each NASA Center is responsible for implementing this hiring authority as prescribed by this guidance.

COVERAGE

1. This authority may be used to fill scientific and professional positions covered by the Group Coverage Qualification Standard for Professional and Scientific Positions.
2. This authority may be used to fill positions at grades GS-07 through GS-12. Positions having a full performance level grade higher than GS-12 still may be filled under this position provided that the grade at which the individual is initially hired does not exceed GS-12.
3. This authority is only valid for making career or career-conditional appointments in the competitive service.

ELIGIBILITY

Candidates must meet the relevant OPM qualification standards and have received the qualifying degree from an accredited university within **two years** of the effective date of the appointment.

BASIC QUALIFICATION REQUIREMENTS

1. Candidates must meet the required academic achievement standards at the time of graduation.
2. Requirements by Grade Level. (Note all grade point averages (GPAs are expressed in terms of a 4.0 scale.)
 - a. **GS-7 Level:** Achieved a cumulative GPA of 3.0 or higher **and** a GPA of 3.5 or higher for courses in the field of study required for the position.
 - b. **GS-9 Level:** Achieved a cumulative GPA of 3.5 or higher in graduate coursework in the field of study required for the position.
 - c. **GS-11 Level:** Achieved a cumulative GPA of 3.5 or higher in graduate coursework in the field of study required for the position.
 - d. **GS-12 Level (Research Positions Only):** Achieved a cumulative GPA of 3.5 or higher in graduate coursework in the field of study required for the position.
3. If the candidate's academic record is based on a grading scale other than 4.0, the record must be converted to an equivalent ratio in order to determine eligibility.

AEROSPACE TECHNOLOGY (AST) QUALIFICATION REQUIREMENTS

1. Where appropriate, candidates still will be required to meet AST qualifications for the position(s) for which they are applying.
2. In the rare case where a candidate meets AST qualification requirements, but does not meet the relevant OPM qualifications standard, the individual is not eligible for a Distinguished Scholar appointment.

HIRING PRIORITIES

1. ICTAP eligibles receive priority consideration.
2. Veterans' preference applies to Distinguished Scholar hiring actions.
3. In order to receive consideration, both veterans and ICTAP eligibles must meet the Distinguished Scholar qualification *and* eligibility requirements.

RECRUITMENT AND RATING

1. NASA STARS will be used to advertise vacancies, and evaluate and refer candidates.
2. Recruitment
 1. Vacancy announcements will include a standard statement identifying the position(s) as being filled using Distinguished Scholar provisions.
 2. As deemed appropriate, managers may simultaneously advertise and consider candidates from other hiring sources.
3. Rating Candidates
 - a. Candidates who meet the minimum qualification requirements need not be further evaluated. If no further evaluation is done, qualified veterans have absolute preference (in the absence of ICTAP candidates).
 - b. If candidates are further evaluated using a category rating process, qualified veterans have absolute preference within the appropriate category.

ACTION PROCESSING

[NOTE: Guidance will be based on the forthcoming guidance from OPM regarding Nature of Action and Authority Codes.]

REPORTING REQUIREMENTS

1. All Distinguished Scholar appointments are to be in accordance with the format prescribed by Headquarters, Office of Human Resources. Information is to be provided to Headquarters as requested, but not less than annually at such dates specified to ensure compliance with annual Congressional reporting requirements.
2. Each Center shall, at a minimum, maintain data on the total number of distinguished scholar appointments, and of those, the number that were made to address a critical need.
3. Centers may maintain additional information as they deem useful and appropriate.

**TRAVEL & TRANSPORTATION EXPENSES OF CERTAIN NEW
APPOINTEES**

Travel And Transportation Expenses Of Certain New Employees

5 U.S.C. 9811

PURPOSE

This implements section 9811 of title 5, United States Code, authorizing NASA to pay the travel, transportation, and relocation expenses of a new appointee to the same extent, in the same manner, and subject to the same conditions as payments of such expenses under title 5, United States Code sections 5724, 5724a, 5724b, and 5724c to an employee transferred in the interest of the United States Government.

APPLICABILITY

This policy is applicable to NASA Headquarters and NASA Centers, including Component Facilities. Unless otherwise indicated, use of the word Center(s) in the text of the policy includes NASA Headquarters and any reference to Center Director(s) includes the Assistant Administrator for Institutional and Corporate Management. Center Director is synonymous with the term Installation Director used in Financial Management Manual (FMM) 9760.

AUTHORITY

1. NASA Flexibility Act of 2004 (P.L. 108-201) as codified in 5 U.S.C. 9811.
2. Title 5, United States Code, sections 5724 (Travel and transportation expenses of employees transferred; advancement of funds; reimbursement on commuted basis); 5724a (Relocation expenses of employees transferred or re-employed); 5724b (Taxes on reimbursements for travel, transportation, and relocation expenses of employees transferred) and 5724c (Relocation services).
3. NASA Financial Management Manual (FMM) 9760, Relocation Allowances.

DEFINITION

The term *new appointee* means

- (1) a person newly appointed or reinstated to Federal service to the Administration to-
 - (A) a career or career-conditional appointment or an excepted appointment to a continuing position;
 - (B) a term appointment;
 - (C) an excepted service appointment that provides for noncompetitive conversion to a career or career-conditional appointment;
 - (D) a career or limited term Senior Executive Service appointment;
 - (E) an appointment made under section 203(c)(2)(A) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473(c)(2)(A));
 - (F) an appointment to a position established under 5 U.S.C. 3104; or

(G) an appointment to a position established under 5 U.S.C. 5108; or
(2) a student trainee who, upon completion of academic work, is converted to an appointment in the Administration that is identified in paragraph (1) in accordance with an appropriate authority.

RESPONSIBILITY

NASA Center Directors and Human Resources Officers and the Assistant Administrator, Human Resources, have authority to authorize travel, transportation, and relocation expenses for a new appointee to the same extent, in the same manner, and subject to the same conditions as payments of such expenses to an employee transferred in the interest of the United States Government.

NEW APPOINTEE TRAVEL

1. Travel authorizing officials will determine when the travel of a new appointee is in the interest of the United States Government and document the reasons on which that decision is based within the travel authorization form.
2. The provisions of FMM 9760 apply except as modified by this policy.
3. When determined to be in the interest of the United States Government, new appointee travel may be authorized under those provisions of FMM 9760 applicable to the transfer of an employee from one permanent duty location to another.
4. The decision to authorize travel for new appointees must be communicated to all potential applicants for the position for which the new appointee is selected. Normally this will be accomplished by including the information in the job vacancy announcement. An exception to this requirement involves the conversion to a competitive appointment and concurrent permanent change of station move for a Student Career Experience Program (SCEP) participant.

RECORDS AND REPORTS

The Agency Travel Office will maintain a record of all travel authorized for new appointees under FMM 9760 and under full travel reimbursement applicable to permanent transfer situations and be able to report the average amount of relocation cost reimbursement paid per new appointee under this authority during the fiscal year and the largest amount of relocation cost reimbursement paid to a new appointee under this authority during the fiscal year.

ANNUAL LEAVE ENHANCEMENTS

Annual Leave Enhancements

5. U.S.C. 9812

PURPOSE

This implements section 9812 of title 5, United States Code, authorizing NASA to provide enhanced annual leave to certain newly appointed employees for the purpose of recruiting skilled and experienced employees from the private sector.

APPLICABILITY

This policy is applicable to NASA Headquarters and NASA Centers, including Component Facilities. Unless otherwise indicated, use of the word Center(s) in the text of the policy includes NASA Headquarters and any reference to Center Director(s) includes the Assistant Administrator for Institutional and Corporate Management.

AUTHORITY

The NASA Flexibility Act of 2004 (P.L. 108-201) as codified in 5 U.S.C. 9812.

DEFINITIONS

1. The term *newly appointed employee* means an individual who is first appointed
 - a. As an employee of the Federal Government; or
 - b. As an employee of the Federal Government following a break in service of at least 90 days after that individual's last period of Federal employment, other than:
 - (1) employment under the Student Educational Employment Program administered by the Office of Personnel Management;
 - (2) employment as a law clerk trainee;
 - (3) employment as a student under a short-term temporary appointing authority during periods of vacation from the educational institution at which the student is enrolled;
 - (4) employment under a provisional appointment if the new appointment is permanent and immediately follows the provisional appointment; or
 - (5) employment under a temporary appointment that is neither full-time nor the principal employment of the individual.
2. The term *period of qualified non-Federal service* means the period of service performed by an individual that
 - a. was performed in a position the duties of which were directly related to the duties of the position in NASA which that individual will fill as a newly appointed employee; and
 - b. except for this section, would otherwise not be service performed by an employee for purposes of title 5, U.S.C., 6302.

3. The term *directly related to the duties of the position* means duties and responsibilities in the same line of work which require similar qualifications.

RESPONSIBILITY

NASA Center Directors, Human Resources Officers and the Assistant Administrator, Human Resources have authority to determine a creditable period of qualified non-Federal service under this provision. This authority may be re-delegated in accordance with Center policy.

EMPLOYEES COVERED

1. Except for employees covered by paragraph 2, below, newly appointed NASA employees are eligible for enhanced leave based on an approved period of qualified non-Federal service.
2. All Employees paid under section 5 U.S.C. 5376 (senior-level positions), 5 U.S.C. 5383 (Senior Executive Service), and employees in equivalent categories whose rate of basic pay is greater than the rate payable at GS-15, step 10 shall receive 1 day for each full biweekly pay period.
3. Enhanced leave authorized under this authority for employees covered by Administratively Determined (AD) pay schedules must be re-determined whenever adjustments are made to an employee's pay. Employees whose pay falls below the GS 15 step 10 level become ineligible for enhanced leave under this authority and must have their service credit for leave re-determined in accordance with 5 U.S.C. Chapter 63. If the employee's pay is adjusted subsequently above the GS-15, step 10 level the employee once again becomes entitled to enhanced leave under this authority.

EXCLUSION

This authority may not be used in connection with a political appointee who holds (1) a position that has been excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character ("Schedule C position"); or (2) a position in the Senior Executive Service as a non-career appointee as such term is defined in section 3232(a) of title 5, United States Code.

CRITERIA FOR APPROVAL

1. Approving officials must consider the following prior to approving a period of qualified non-Federal service for credit under this section for newly appointed employees:

<u>Considerations</u>	<u>Definition</u>
The Skills are Essential	Importance of the required skills to the organization's and NASA's success
Degree of Difficulty in Obtaining the Skills	Availability of quality candidates with the desired skills and experience. Positions with a limited qualified applicant pool may indicate a shortage of labor and, therefore, the skills may be difficult to obtain

2. Approval must be based on written documentation that:
 - a. The skills are essential;
 - b. The skills are difficult to obtain; and
 - c. Enhanced annual leave entitlement will assist NASA in obtaining these skills.
3. Annual leave enhancements should be used as a recruitment incentive.
4. Internal equity and leave accrual rates for the organization's current Federal employees with equivalent skills and length of service should be considered when determining the amount of non-Federal experience to be credited for leave accrual purposes.

LEAVE ACCRUAL RATES

1. When the approving official has determined that a period of qualified non-Federal service is creditable for leave accrual under this section, all or a portion of the specified period of creditable non-Federal service may be used to determine an employee's annual leave accrual rate. The accrual rate will be determined in accordance with 5 U.S.C. 6303(a).
2. All Employees paid under section 5 U.S.C. 5376 (senior-level positions), 5 U.S.C. 5383 (Senior Executive Service), and employees in equivalent categories whose rate of basic pay is greater than the rate payable at GS-15, step 10 shall receive 1 day for each full biweekly pay period.
3. While employed at NASA, annual leave accrual rates established under this section shall continue. Upon transfer to another federal agency, the employee's creditable service for annual leave accrual and the annual leave accrual rate will be determined by the gaining agency in accordance with 5 U.S.C. Chapter 63.

PERSONNEL ACTION PROCESSING

1. [NOTE: Guidance will be based on the forthcoming guidance from OPM regarding Nature of Action Codes and Authority Codes.]

2. The REMARKS section of the personnel action (Standard Form 50) must state: “The employee’s annual leave accrual rate was set pursuant to 5 U.S.C. 9812. In the event the employee leaves NASA and is employed subsequently in another position subject to the provisions of 5 U.S.C. Chapter 63, the employee’s service credit for annual leave and annual leave accrual rate will be determined by the gaining agency in accordance with 5 U.S.C. Chapter 63.”

RECORDS AND REPORTS

1. Center Human Resource Officers must maintain a record of:
 - a. The total number of employees who were awarded enhanced annual leave under this section during the previous fiscal year;
 - b. The number of employees who were awarded enhanced annual leave who were serving in a position addressing a critical need described in the workforce plan pursuant to 5 U.S.C. section 9802; and
 - c. The average amount of additional annual leave such employees earned in the preceding fiscal year (over and above what they would have earned absent this section) for each of the categories in a. and b. above.

**LIMITED APPOINTMENTS TO SENIOR EXECUTIVE SERVICE
POSITIONS**

Limited Appointments To Senior Executive Service Positions

5 U.S.C. 9813

PURPOSE

To provide a mechanism to make time-limited SES appointments to Career Reserved SES positions (which comprise over 75% of NASA's SES positions) to meet a variety of short-term needs, and to provide the ability to pay SES bonuses to such individuals.

AUTHORITY

The NASA Flexibility Act of 2004 (P.L. 108-201) as codified in 5 U.S.C. 9813.

KEY FEATURES OF PROVISION:

1. This section of the NASA Flexibility Act of 2004 expands the current SES appointment authority to allow the Administrator the flexibility to fill a Career Reserved SES position on a temporary basis (not limited to project-based needs or emergencies) to meet a variety of short-term needs.
2. It also authorizes NASA to treat individuals appointed under this authority as Career appointees for purposes of performance awards (SES bonuses), and thus permits payment of bonuses, similar to those available to executives on permanent appointments.

EXCLUSION

This authority may not be used in connection with a political appointee who holds (1) a position that has been excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character ("Schedule C position"); or (2) a position in the Senior Executive Service as a non-career appointee as such term is defined in section 3232(a) of title 5, United States Code.

INTERIM IMPLEMENTING POLICIES and PROCEDURES:

Currently there is no NPR that establishes procedures and guidelines for filling limited appointments. No additional NPR guidance is proposed, but current guidance will be revised to include references to the new authorities. Specifically:

- a. The delegation memo on SES actions will be revised to clarify inclusion of the new authority;
- b. The NPR 3100.1 (Management of the SES) will be revised to reference the new authority; and
- c. The NPR 3451.1 (NASA Awards and Recognition Program) will be revised to include the reference to the new authority; and Appendix C to include limited appointments for Career Reserved type positions.

REPORTING REQUIREMENTS:

Data will be maintained on the use of these authorities to comply with the annual requirement to report:

- a. the number of appointments/bonuses by position, appointment type, and job series made under this authority each fiscal year and
- b. the number of appointments made under this authority that were made to address a critical need described in the Agency's workforce plan.

Centers will report this information annually, by fiscal year, to the Agency personnel Division for inclusion in a consolidated report to Congress.

QUALIFICATIONS PAY AUTHORITY

(These implementing policies have been approved by the Office of Personnel
Management)

Qualifications Pay

5 U.S.C. 9814

PURPOSE

This implements the NASA Flexibility Act of 2004, as codified in 5 U.S.C. 9814, authorizing NASA to set the pay of employees under the General Schedule at any step within the pay range for the grade of the position when the employee possesses unusually high or unique qualifications and is assigned new duties without a change of position, or is assigned to a new position.

APPLICABILITY

This policy is applicable to NASA employees paid under the General Schedule. Unless otherwise indicated, use of the word “Center(s)” in the text of this policy includes NASA Headquarters.

AUTHORITY

The NASA Flexibility Act of 2004 (P.L. 108-201) as codified in 5 U.S.C. 9814. (Hereafter referred to as the Act.)

DEFINITIONS

1. The phrase *new duties without a change in position* means new duties added to an employee’s current position of record, whether or not it results in a promotion, that are directly related to the unusually high or unique qualifications on which a pay-setting decision, made under this section, is based and are sufficiently different from the other duties to require a re-description of the position and assignment of a new position description number.
2. For purposes of applying the qualifications pay authority, the phrase *successor position* means a position in the same organization that continues to include duties of a position and responsibilities directly related to the unusually high or unique qualifications on which the original pay-setting decision, made under this section, was based.
3. The phrase *unusually high or unique qualifications* means a skill-set, competencies, or “know-how” needed to perform the new duties or the duties of a new position and exceed those of other candidates in terms of depth of expertise and/or breadth and depth of experience. Possession of such qualifications may be evidenced by demonstrated ability to apply the competencies at the required proficiency level for the duties of the position.

4. The *approving official* is the person to whom the Center Director or Assistant Administrator for Human Resources has delegated authority under NPD 3000.1 to set pay under this section.

RESPONSIBILITY

NASA Center Directors and the Assistant Administrator for Human Resources are authorized to set pay under this provision. This authority may be re-delegated in accordance with NPD 3000.1

CRITERIA FOR APPROVAL

1. Approving officials must consider the following to determine whether an employee possesses unusually high or unique qualifications prior to setting pay under this section:

<u>Considerations</u>	<u>Definition</u>
Essential Skills	Importance of the required skills to accomplishing the organization's mission and goals
Unique or Difficult to Obtain Skills	Availability of quality candidates with the desired skills and experience is limited.
Breadth and Depth of Skills Versus that of Other Employees or Candidates	The employee's skills compared to the skills of other employees or candidates who perform the same or similar work

2. Approval must be based on written documentation that:
 - a. The skills are essential;
 - b. The skills are unique or difficult to obtain; and
 - c. The breadth and depth of the employee's or candidate's skills exceeds those of other employees or candidates. Evidence on which this is based will be included in the determination.
3. When a current NASA employee is selected for another position within NASA, and pay is set under this section, the approval must include documentation explaining how the employee's contributions in the new position will exceed those in the former position.
4. Approving officials must consider whether there are other appropriate pay incentives, such as relocation or redesignation bonuses, that could be used instead of or in conjunction with setting pay under this section (Note: a redesignation bonus can be considered only as an option for a Federal employee transferring to NASA from another agency, not for current NASA employees). The rationale for using or not using other incentives must be documented when pay is set under this section.

PAYSETTING

1. When setting pay for a GM employee under this section the pay must be set at a rate equal to a step within the employee's grade.
2. Normally, pay set under this section will be an equivalent increase for the purpose of calculating waiting periods for within grade increases except as provided under Service Requirement, paragraph 2, of this policy. An exception may involve a GM employee who moves from a rate within the grade to the next step in the grade and the amount of the increase does not meet the definition of *equivalent increase* contained in 5 CFR Part 531, Subpart D.
3. When qualifications pay is approved, the impact on the aggregate pay limitation must be determined. See 5 CFR Part 530, Subpart B for guidance on situations when an employee's pay exceeds the aggregate limitation on pay.
4. A new qualifications pay determination must be made in order to continue qualifications pay when an employee moves to another position, that is not a *successor* position, before completing the 1 year service requirement.

POSITIONS COVERED

1. Positions classified under the General Schedule requiring skills that are essential to an organization, a project or NASA's mission and goals are covered by this section. This includes the following:
 - a. Aerospace Technology (AST) positions;
 - b. Professional positions; and
 - c. Administrative and Management positions.
2. Normally one-grade interval administrative support and technician positions classified under the General Schedule will be excluded from coverage under this section. However, on a case-by-case basis, exceptions may be granted when such a position is essential to the success of the organization, project, or NASA's Mission and goals and using this pay-setting authority is needed to fill the position.

POSITIONS EXCLUDED

1. This section does not cover positions for which pay is set outside of the General Schedule, e.g., SES, Federal Wage System, administratively-determined pay.
2. This authority may not be used to set the pay of a political appointee who holds (1) a position which has been excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character ("Schedule C position") or (2) a position in the Senior Executive Service as a noncareer appointee as such term is defined in 5 U.S.C. 3232(a).

ACTIONS COVERED

1. The qualifications pay provisions may be used in connection with the following categories of personnel actions: position re-descriptions; promotions; transfers; reassignments when new duties are added; changes to lower grade; position changes; time-limited promotions; conversions to new appointments.
2. This authority will not be used to set pay for newly hired employees. Newly hired employees for this purpose are those who at the time of appointment are not currently employed in a federal position.

PROHIBITED USE

1. This authority will not be used to set pay as a result of an adverse action due to poor performance or misconduct or for actions initiated by the employee solely for his or her benefit, convenience, or personal advantage.
2. This authority will not be used to set pay at a rate lower than a rate an employee is otherwise entitled to by law or regulation.

SERVICE REQUIREMENT

1. If an employee serves for at least one year in the position for which pay was set under this section (or successor position), the pay earned under such position may be used in succeeding actions to set pay under chapter 53, title 5 of the United States Code.
2. In the event that an employee moves to another position (that is not a successor position) prior to serving one year in the qualifications pay position, NASA will constructively determine the employee's rate of basic in the former position as if qualifications pay was never authorized before pay may be set in the new position. This includes constructively determining the employee's rate of basic pay with any statutory increases and within-grade increase the employee would have received in the former position if qualifications pay had not been authorized. This constructively adjusted rate of basic pay will be used in applying any pay administration rules to set pay in the new position (e.g., maximum payable rate rule, two-step promotion rule), unless the employee is eligible for a higher rate of pay under other authority. The former qualifications pay rate may not be used to set pay in the new position.
3. Employees for whom pay is set under this section must be informed of, and sign a memorandum stating they understand, how their pay will be set if they move voluntarily or involuntarily to another position for which pay under this section is not authorized prior to completing the 1 year service requirement.

ACTION PROCESSING

1. [NOTE: Guidance will be based on the forthcoming guidance from OPM regarding Nature of Action Codes and Authority Codes.
2. The REMARKS section of the personnel action must state:

The employee's pay for this position was set pursuant to P.L. 108-201, as codified in 5 U.S.C. 9814. If the employee remains in this position (or a successor position) for 1 year commencing with the date of this action, pay earned under this position may be used in succeeding actions to set pay under 5 U.S.C. Chapter 53. If the employee leaves the position before completing 1 year in the position, pay will be set under NASA's (or the gaining Agency's) pay setting policy, but pay earned pursuant to 5 U.S.C. 9814 cannot be used to set pay in the new position.

EFFECTIVENESS MEASURES

1. Center Human Resources Officers will assess the effectiveness of the qualifications pay provision by tracking the positions filled under this section that closed a current or projected competency gap, identified through the NASA Competency Management System. Data will indicate whether a position filled through the use of this authority addresses a critical need as identified in the NASA Workforce Plan.
2. Use of this incentive will be measured by establishing a baseline in the first full fiscal year following the authorization to use it and then comparatively measuring each later fiscal year's use against the baseline year.

RECORDS AND REPORTS

Center Human Resource Officers must maintain a record of the number of employees for whom pay was set under this section and report that number annually, by fiscal year, to the Agency Personnel Division for inclusion in a consolidated report to Congress. Additionally, the report must stipulate the number of times pay was set under this section to address a critical need described in the work force plan pursuant to the Act.